IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 907 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANTKUMAR ALIAS RAJU S/O SIYARAMSING RAJPUT - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AMRISH K PANDYA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr. N.D. Gohil, Astt. GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 12/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner detenu, Santkumar alias Raju s/o Siyaramsing Rajput, has

challenged his detention order dated 25.10.2005. By the aforesaid detention order, the petitioner is detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to six criminal cases pending against the petitioner. These cases are filed at Naroda Police Station under various provisions of the Indian Penal Code, such as section 380, 454, 457, 114 etc. The detaining authority, after having been subjectively satisfied, has detained the petitioner under PASA Act as a dangerous person.

Learned advocate for the petitioner submitted that in connection with all the aforesaid cases, the petitioner was in judicial custody. He further submitted that the detaining authority has stated in the grounds of detention that the petitioner may move application for bail at any point of time, and after being released on bail, he may again continue with the said activities. Learned advocate for the petitioner further submitted that the detaining authority has not given any reasons as to on what basis and material it has come to the conclusion that the petitioner may move an application for bail at any point of time and after being released on bail, he may continue with the same activities.

Learned advocate for the petitioner relief on a recent decision of the Honourable Supreme Court in the case of **T.V. SRAVANAN vs. STATE** reported in

(2006) 2 SCC 664. In the said judgment, the Honourable Supreme Court has held as under in paragraphs 13 and 14:

> “13. A somewhat similar reasoning was adopted by the detaining authority in Rajesh Gulati v. Govt. of NCT of Delhi. This Court noticing the facts of the case observed: (SCC pp. 133-134, para 13).
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> > ““13. In this case, the detaining authority's satisfaction consisted of two parts – one: that the appellant was likely to be released on bail and two: that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant was in custody when the order of detention was passed. But the detaining authority said that 'bail is normally granted in such cases'. When in fact the five applications filed by the appellant for bail had been rejected by the courts (indicating that this was not a 'normal' case), on what material did the detaining authority conclude that there was 'imminent possibility' that the appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention

> was passed, the 'normal' rule of release on bail had not been followed by the courts and it could not have been relied on by the detaining authority to be satisfied that the appellant would be released on bail. (See in this context Ramesh Yadav v. District Magistrate, Etah, AIR at p. 316).”"

14. We are satisfied that for the same reasons the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The 'imminent possibility' of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority o n the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, not sufficient compliance with the requirements as laid down by this Court. These are the reasons for

which while allowing the appeal we directed the release of the appellant by order dated 13.12.2005."

Learned advocate for the petitioner also relief on the judgment in the case of **U.A. PATHAN vs. STATE** reported in 2003 (4) GLR 3646 has taken a view that when a detenu is in judicial custody at the time of detention, cogent reasons are required to be given that he is likely to be released on bail. In paragraph 5 of the judgment in the aforesaid case, this Court held as under:

"5. Learned advocate for the petitioner has fairly stated that, even the bail application, which was subsequently filed by the detenu, was also rejected by the Sessions Court. Learned advocate has relied upon the decision of the Apex Court in the case of Amritlal and other Vs. Union Government, reported in AIR 2000 SC 3675, wherein the Apex Court in paras 4, 5 and 6 observed as under.:

"4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 CriLJ 1959) wherein it was held that if a person is in

custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention

> of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."
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> 5. It is this reasoning which the learned advocate contended that the High Court should have held to be completely erroneous in the matter of being the basis of an order of detention.
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> 6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is `likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the `likelihood of his moving an application for bail' which is different from `likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down."

Even in the past, detention order passed by the very same detaining authority was required to be quashed only on the ground that it is not stated in the detention order as to on what basis the detaining authority is satisfied that the detenu is likely to

be released on bail. The detaining authority is required to follow the law laid down by the Apex Court as well by this Court. The detaining authority has not stated anything in this behalf. In the instant case, the detenu has not even made any application for bail. Learned Additional Public Prosecutor has also rightly submitted that looking to the nature of the offence in which the petitioner is said to have been involved, it cannot be said that the cases are simple cases wherein the petitioner will be straight away released on bail. The detaining authority has not applied its mind before making the order that after being released on bail, the petitioner will continue with the same activities. It is for the concerned criminal court to decide whether bail is required to be granted or not as and when any application is preferred before the Court. The detaining authority cannot presume that bail will be granted straight away. It is hoped that the detaining authority will be more careful in future and before passing such orders, shall follow the law laid down by the Apex Court and this Court. While making such observations, atleast some reasons are required to be recorded as to on what basis an opinion is formed by the detaining authority that the detenu will be granted bail on presentation of the bail application, more particularly because this Court has dealt with the detention order passed by the very detaining authority in U.A. PATHAN vs. STATE reported in 2003 (4) GLR 3646.

In view of the aforesaid aspect of the matter by which the detaining authority has not recorded any

reasons as to on what basis the authority has come to a subjective satisfaction that the detenu is required to be detained as on presentation of bail the detenu will be released on bail, in the light of the decision of the Apex Court in T.V. SRAVANAN's case [supra] and this Court in U.A. PATHAN's case [supra] this petition is required to be allowed. Moreover, the cases referred to in the grounds of detention fall within maintenance of “law and order” and not “public order”. The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be in accordance with law. In view of the same, the detention order deserves to be quashed and set aside. In the result, the order of detention passed against the petitioner dated 25.10.2005 is quashed and set aside. The petitioner is ordered to be released forthwith unless he is required in connection with any other offence. Rule is made absolute, with no order as to costs.

[P. B. MAJMUDAR, J.]

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